The relevant facts (as petitioner agrees) are adequately set forth in footnote 1 of the court of appeals' opinion. They show that petitioner, along with others, was involved in a large-scale scheme to import marijuana into this country from Mexico (some 93 kilos of marijuana were actually discovered in the course of the instant border search) and traveled back and forth from Mexico in connection with this operation.

In these circumstances, the court of appeals correctly concluded that the giving of the "presumption" instruction regarding knowledge of illegal importation, which was found irrational as to the purchaser or ultimate consumer in *Leary* v. *United States*, 395 U.S. 6, was harmless beyond a reasonable doubt under the standards set forth in *Chapman* v. *California*, 386 U.S. 18, and *Harrington* v. *California*, 395 U.S. 250, as applied here to one who under the evidence must have known of the illegal importation. Indeed, as we have urged in recent briefs in opposition, in our view the knowledge aspect of the presumption dealt with in *Leary* was held invalid in the context of what the purchaser or ultimate consumer could be assumed to know, and does not carry over as to a large-scale supplier, which petitioner obviously was, who would plainly know the source of his marijuana. See our briefs in opposition in *Matthews* v. *United States*, No. 375 Misc., 1969 Term, certiorari denied, June 15, 1970, and *Cook* v. *United States*, No. 531 Misc., 1969 Term, certiorari denied, June 15, 1970.[1]

[1] We are providing defense counsel with copies of the briefs in opposition in these cases.

This rationale applies *a fortiori* to one actually engaged in illegal importation activity.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JULY 1970.

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